In re Patent Application of:
ZAKHAROFF
Serial No. **10/786,450**
Filed: **February 25, 2004**
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<u>REMARKS</u>

The Examiner is thanked for the thorough examination of
the present application. The Examiner is also thanked for
properly withdrawing the previous rejections with respect to the
prior art. Claims 1, 3-4, 6-10, 13, and 15-16 have been amended
for clarity. The patentability of the claims is discussed below.

I. The Claimed Invention

The invention, as recited in independent Claim 1, for
example, is directed to a communications system which includes at
least one destination server for hosting a plurality of
electronic mail (email) message boxes, and a plurality of
communications devices for generating email messages each
associated with a respective message box. The system further
includes a delivery server including a plurality of queues and a
controller. More particularly, the controller is for storing the
email messages generated by the communications devices in a first
queue, and attempting to send the stored email messages to the at
least one destination server at a first sending attempt rate.
The controller also moves email messages stored in the first
queue to a second queue based upon receipt of a delivery failure
message.

The controller then attempts to send email messages
stored in the second queue to the at least one destination server
at a second sending attempt rate that is less than the first
sending attempt rate. The second queue is one of a plurality of
queues arranged in a hierarchy. Each queue in the plurality of
queues has a storage interval that successively increases from a

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highest queue to a lowest queue, and the storage interval is independent of the first and second sending attempt rates.

The controller also moves email messages from a higher queue to a next lower queue after being stored in the higher queue for a duration of its storage interval. The controller also advantageously moves email messages having a common characteristic with a successfully delivered email message to the first queue.

Independent Claim 10 is directed to a corresponding delivery server of independent Claim 1. Independent Claim 17 is directed to a corresponding method of independent Claim 1, and independent Claim 24 is directed to a related computer-readable medium.

II. The Claims Are Patentable

The Examiner rejected independent Claims 1, 10, 17, and 24 over a four-way combination of Gainey et al., D'Souza et al., Rouse, and Sherwood. Gainey et al. is directed to an enterprise email management system. The enterprise email system processes incoming email using a set of configurable rules that examine each message for a specific attribute stat condition and invoke a configurable action when the attribute satisfies the condition. The Examiner correctly recognized that the primary reference, Gainey et al., fails to disclose:

1) storing the email messages generated by the communications device in a first queue;

2) attempting to send the stored email messages to the at least one destination server at a first sending rate;

3) the second queue being one of a plurality of queues arranged in a hierarchy;

4) each of the plurality of hierarchal queues has a storage interval that successively increases from a highest queue to a lowest queue;

5) attempting to send email messages stored in the second queue to the at least one destination server at a second sending rate less than the first sending rate; and

6) moving email messages having a common characteristic with a successfully delivered email message to the first queue.

The Examiner then turned to D'Souza et al. for some of these numerous critical deficiencies. D'Souza et al. is directed to a system and method of mitigating attacks, such as denial of service attacks in a communications network. More particularly, D'Souza et al. discloses monitoring source addresses of packets in a network and comparing the source addresses to known legitimate addresses. If a source address is known as being legitimate, the packets are placed in a high priority queue for transmission at the highest rate. Packets with unknown addresses are placed in a lower priority queue and the packet serviced at a lower rate.

The Examiner further correctly recognized that even a selective combination of Gainey et al. and D'Souza et al. fails to disclose the sending rates as sending attempt rates. The Examiner turned to Rouse for this critical deficiency. Rouse is directed to a serial link communications system that includes cascaded switches.

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The Examiner further correctly recognized that even a selective combination of Gainey et al., Rouse, and D'Souza et al. fails to disclose moving email messages having a common characteristic with a successfully delivered email message from the second queue to the first queue. The Examiner turned to Sherwood in an attempt to supply these critical deficiencies.

Sherwood is directed to a system for selective application of email delivery options. More particularly, Sherwood discloses a system for selectively applying delivery options to addresses in an email, for example, selectively applying a delivery confirmation and/or return receipt for an email address.

Applicant submits that the Examiner mischaracterized Gainey et al. in that it fails to disclose moving email messages stored in the first queue to a second queue based upon receipt of a delivery failure message. The Examiner contended that Gainey et al. Col. 11, lines 31-47 somehow disclose the above-noted critical deficiency. More particularly, the Examiner makes the logical leap that a timeout failure indication is a message that is received by the logic using the timeout information. Indeed, Col. 11, lines 31-47 of Gainey et al. merely disclose moving a message if the timer has expired. The expiration of the timer cannot be a delivery failure message as, independent Claim 1, for example, recites moving email messages based upon expiration of a storage interval <u>and</u> a upon receipt of delivery failure message. Thus, the expiration of a duration of the storage interval (i.e., the time expiring in Gainey et al.) is not a delivery failure message. Indeed, the Examiner is improperly using the same prior

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art element to meet two separate claim recitations. Accordingly, independent Claims 1, 10, 17, and 24 are patentable for this reason.

Moreover, while the Examiner may apply the broadest reasonable interpretation to the claim recitations, the Examiner is reminded that the interpretation must be reasonable in light of Applicant's specification. (See MPEP §2111). Interpreting a delivery failure message as being some hypothetical message received by the logic using the timeout information is unreasonable.

Still further, Applicant submits that the Examiner mischaracterized Gainey et al. in that it fails to disclose moving email messages having a common characteristic with a successfully delivered email message to the first queue. The Examiner contended that Figure 4, element 414 of Gainey et al. somehow discloses detection of successful email message delivery. Instead, Gainey et al. discloses determining if the messages have been acted upon, after it has been delivered into one of the user mailboxes (i.e. generate a response to the message, marking the message as requiring no response, releasing the message back to the queue from which it came, or routing the message to a different mail queue). (See Gainey et al., Col. 11, line 56 – Col. 12, line 15). More particularly, element 412 of Gainey et al. discloses "the message has been moved into one of the user mailboxes." (See Gainey et al., Col. 11, lines 56-57). Accordingly, independent Claims 1, 10, 17, and 24 are patentable also for this reason.

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Additionally, the Examiner contended that Gainey et al.
discloses a plurality of communications device for generating
email messages and at least one destination server for hosting a
plurality of email messages, and a delivery server. Applicant
submits that the contended plurality of communications devices in
Gainey et al. receive emails processed from the email queuing and
mailbox system 140. In other words, Gainey et al. is the
complete opposite of the claimed invention. Instead, of a
plurality of communications device generating email messages, and
a delivery server attempting to send the emails messages to a
destination server, Gainey et al. discloses email coming from a
single incoming email server 110, and the email queuing and
mailbox system 140 moving email messages to the user mailboxes
(i.e. not a destination server).

Applicant even further submits that the Examiner
mischaracterized the prior art in that even a selective
combination of the four prior art references fails to disclose
each queue of the plurality of queues having a storage interval
that successively increases from a highest queue to a lowest
queue. The Examiner contended that paragraphs 0028 and 0029 of
D'Souza et al. somehow supply this critical deficiency.
Paragraphs 0028 and 0029 of D'Souza et al. disclose packets being
sent to different queues, one of which is serviced at a highest
rate, and another of which being serviced at a lower rate. (See
D'Souza et al., paragraph 0028). "To move from one group to the
next, a client must prove itself to be legitimate." (See D'Souza
et al., paragraph 0029, and FIG. 3). More particularly, if a
packet is found to be "good," i.e. found in a "good" table, the

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packet is placed in a higher <u>bandwidth</u> queue, and as a result is
serviced at a higher rate. (See D'Souza et al., paragraph 0030).
Moreover, "bad" packets can be moved to the "good" table if it
turns out the packets are from a legitimate source. (See D'Souza
et al., paragraph 0030). Nowhere in D'Souza et al. does it
disclose each queue of the plurality of queues having <u>a storage</u>
<u>interval</u> that successively increases from a highest queue to a
lowest queue, but rather queues serviced at different rates.

Indeed, a rate, as in D'Souza et al. is not the same as
the claimed storage interval. In particular, the present claims
recite an "attempt rate" and a "storage interval," and thus,
cannot refer to the same element.

Applicant further submits that the Examiner
mischaracterized Gainey et al. as it fails to disclose moving
email messages from a higher queue to a next lower queue after
being stored in the higher queue for a duration of its storage
interval. Instead, Gainey et al. discloses moving a message from
a first queue to a second queue with a shorter time out period
(i.e., smaller interval). Applicant notes that the Examiner
turned to D'Souza et al. as disclosing the second queue being
from a plurality of queues arranged in a hierarchy and having a
storage interval that successively increases from a highest queue
to a lowest queue. Indeed, even if D'Souza et al. somehow
disclosed this, D'Souza would expressly teach away from combining
with Gainey et al. since they disclose completely opposite
teachings. Accordingly, independent Claims 1, 10, 17, and 24 are
patentable also for this reason.

Even still further, the Examiner contended Gainey et al. discloses the first and second attempt rates being independent of the storage interval. The Examiner reasoned that simply because Gainey et al. fails to disclose attempt rates and moves email based upon an expiration of a timer, that Gainey et al. discloses the first and second attempt rates being independent of the storage interval. Nowhere does Gainey et al. disclose attempt rates. Thus, the Examiner's reasoning is in error as he is taking a lack of teaching of an attempt rate in Gainey et al. as a teaching that should one exist, it is independent of a storage interval.

The Examiner turned to D'Souza et al. as somehow disclosing attempt rates. Indeed, D'Souza et al. disclose the queues being serviced at different rates. The Examiner, in the telephonic interview of September 27, 2011 contended that being sent at different attempt rates is related to the storage interval. While Applicant disagrees with the Examiner, to advance prosecution, Applicant amended the independent claims to recite the storage interval being independent from the first and second attempt rates, which the Examiner agreed would define over the previous prior art, and in particular, D'Souza.

Applying the Examiner's reasoning, D'Souza expressly teaches away from a combination with Gainey et al. More particularly, Gainey et al. discloses moving messages based upon expiration of a timer, and fails to mention any attempt rates. In contrast, D'Souza et al, as agreed by the Examiner, discloses any hypothetical attempt rate being dependent on a storage interval. In other words, the Examiner is improperly selectively

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combining disjoint pieces of the prior art using Applicant's own specification as a roadmap.

Moreover, Applicant submits that to combine the four prior art references would require such additional effort that no one of ordinary skill in the art <u>at the time of the invention,</u> would have undertaken it without a recognized reason to do so. (See *KSR Int'l Co. v. Teleflex, Inc.,* 550 U.S. 398 at 401 (2007). Indeed, this is evidenced by the disjoint nature of the cited prior art. In other words, the claimed invention requires a greater expenditure of time, effort, or resources than the prior art teachings. Accordingly, independent Claims 1, 10, 17, and 24 are patentable also for this reason.

Applicant further submits that the Examiner's combination of references is improper. More particularly, a person having ordinary skill in the art would not turn to Sherwood or Rouse in an attempt to supply the critical deficiencies of Gainey et al, and D'Souza et al., and even turn to D'Souza et al. to combine with Gainey et al. Sherwood is directed to a system for applying delivery options to addressees in an email. More particularly, Sherwood discloses selecting an option of delivery confirmation and return receipt for an addressee. Sherwood is not directed to sending the email, as it is sent using "the conventional email composition and sending process."

Rouse is directed to serial link data processing. More particularly, Rouse is directed to a network switch for network communication among devices connected to the switch.

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In stark contrast, D'Souza et al. is directed to a queuing method for mitigation of packet spoofing. More particularly, D'Souza et al. attempts to mitigate attacks such as Denial of Service attacks by examining all incoming packets. In stark contrast from D'Souza et al., Rouse, and Sherwood, Gainey et al. is directed to an enterprise email management system. Indeed, the Examiner is using impermissible hindsight reconstruction based on motivation provided by Applicant's own specification in an attempt to produce the claimed invention by selectively assembling disjoint pieces of the prior art. Accordingly, the Examiner's combination of references is improper.

It is submitted that amended independent Claims 1, 10, 17, and 24 are patentable. Their respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

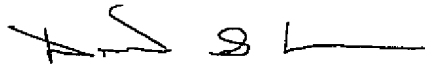In re Patent Application of:
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III. CONCLUSION

In view of the arguments provided herein, it is submitted that all the claims are patentable. Accordingly, a Notice of Allowance is requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,

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